

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Michael Koch et al.

Application No.: 10/522,341

Confirmation No.: 5941

Filed: January 25, 2005

Art Unit: 1638

For: NOVEL SELECTION PROCESS

Examiner: Zheng, Li

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. § 1.705(B)**

MS Petition  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice Of Allowance dated November 2, 2009, Applicants respectfully request reconsideration of the Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. In particular, Applicants request that the Patent Term Adjustment be reconsidered to reflect the delay due to the failure of the Patent Office to issue the patent within three years after the filing date of the application notwithstanding any applicant delays.

The USPTO implemented the three-year pendency provision in 35 U.S.C. § 154(b)(1)(B) which provides that an applicant is entitled to additional patent term adjustment if the issue of an original patent is delayed due to the failure of the USPTO to issue a patent within three years after the actual filing date of the application. Pursuant to the Notice Concerning Calculation of the Patent Term Adjustment under 35 U.S.C. § 154(b)(1)(B) involving International Applications Entering the National Stage Pursuant to 35 U.S.C. § 371 ("Notice") dated September 10, 2009 (1347 OG 49), the three-year pendency provision in 35 U.S.C. § 154(b)(1)(B) should be measured from the date that the national stage commences under 35 U.S.C. § 371 (b) or (f) in an international application.

Moreover, pursuant to the recent Federal Circuit decision in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010), instead of the USPTO's current practice, an applicant is entitled to additional patent term adjustment under 35 U.S.C. § 154(b) due to PTO delay to respond

promptly to applicant's submission ("A delay") **AND** PTO delay to issue a patent within three years of filing or commencement of national stage ("B delay") to the extent that they do not occur on the same calendar day(s).

The present application is a national stage of the international application no. PCT/EP2003/07877 pursuant to 35 U.S.C. § 371, with the national stage commencing on January 25, 2005 under 35 U.S.C. § 371 (b) or (f). A Request for Continued Examination (RCE) was filed in this application on August 20, 2008. As indicated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) accompanied with the Notice of Allowance dated November 2, 2009, the Patent Term Adjustment for the present application was determined to be 123 days. However, Applicants have at the very least not been accorded any "B delay" to which they are entitled at least to the filing date of the RCE. Accordingly, Applicants respectfully request that the patent term adjustment be reconsidered based on the decision in *Wyeth v. Kappos*.

Accompanied with this request is the payment of the Issue Fee and the petition fee in the amount of \$200.00 pursuant to 37 C.F.R. § 1.18(e). The request is considered as being filed timely pursuant to 37 C.F.R. § 1.705(b) as it is filed no later than the payment of Issue Fee. Applicants respectfully request that the Commissioner not postpone issuance of a patent while the petition is pending. Applicants further request that a Certificate of Correction pursuant to 37 CFR §1.322 be provided by the Commissioner if the patent term adjustment is ultimately granted after issuance of the patent.

Applicants believe no further fee is due with this response. However, if it is determined that a fee was not due because of the USPTO's calculation error in light of the *Wyeth v. Kappos* or if a further fee is due, please credit or charge our Deposit Account No. 03-2775, under Order No. 12810-00057-US from which the undersigned is authorized to draw.

Respectfully submitted,

By   
Roberte M.D. Makowski, Ph.D., J.D.

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